HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.281 of 2006

Dhyan Singh
S/o late Shri Bhenu
R/o village Tilwari, Vyas Bhood
Tehsil Kalsi
District Dehradun .....Applicant

Versus

State of Uttaranchal .....Respondents

Sri R.P. Nautiyal learned counsel for the applicant
Sri G.S. Sandhu learned A.G.A. for the State

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 28.04.2006 passed by the Special Judicial Magistrate, IInd Dehradun in misc. application No. 26/2006 Dhyan Singh Vs. Khajan Singh Rana & others. It has been further prayed that the Special Judicial Magistrate, IInd Dehradun may be directed to allow the application dated 26.04.2006 filed on behalf of the applicant under section 156(3) Cr.P.C. and further direct the concerned police station to register the FIR of the applicant against the accused persons.

2. Brief facts of the case are that on 08.04.2006 one-Balbir Singh lodged an FIR with the allegations that one-Pradeep Singh – son of applicant has induced and abducted his minor daughter Km. Nisha with the help of the applicant and other co-accused persons. The case was registered under sections 363 & 366 IPC at police station Kalsi, District Dehradun. Subsequently, the victim was recovered by the police and the girl was handed over to her parents. Thereafter, an application was moved on behalf of the victim before the Magistrate requesting to send her in the '*Nari Niketan*'. The victim has further stated in the said application that she does

not want to live with her parents. The learned Magistrate allowed the said application filed by the victim and the Magistrate has passed the order for sending the victim to the '*Nari Niketan*' vide order dated 29.4.2006.

3. It has been alleged in the petition that the applicant and his family members were arrested in case crime No. 15/2006 by the police and they were in jail. On 8.4.2006 one-Khajan Singh Rana and other accused persons came to the house of the applicant and assaulted Vinod (son of the applicant) with deadly weapons. Vinod has sustained the injuries and he was admitted in the hospital in Doon Hospital for more than 10 days. The accused persons also damaged the household goods of the applicant. When the applicant was released on bail he came to know about the said offence committed by the accused persons. On 22.04.2006, the applicant went to the police for lodging the FIR. When no heed was paid to his request, he filed an application under section 1563) Cr.P.C. in the court of Special Judicial Magistrate, Dehradun. On which, the learned Magistrate called the report of the police station, who submitted its report on 28.4.2006 stating therein that the accused persons committed the 'marpeet' with the injured-Vinod and the matter is under-inquiry and no case been registered. Meaning thereby, the FIR was not lodged and the matter was not under investigation.

4. After the receipt of the said report, the Magistrate did not order to register or investigate the matter in accordance with law. The Magistrate kept the matter pending till the completion of inquiry and the same enquiry is not provided under the Cr.P.C. Feeling aggrieved by this, the present petition has been filed before this Court.

5. Learned counsel for the applicant contended that the Magistrate is empowered to refer the matter to the police for investigation under section 156(3) Cr.P.C. if an offence is made out in the complaint. It was further contended that the police report dated 28.04.2006 shows that the offence has been committed with the injured-Vinod. The learned counsel for the applicant contended that the learned Magistrate has erred in not directing the police to investigate the matter.

6. I have gone through the record available before me. It needs to be mentioned here that it is well settled position in law that the Magistrate has got two options when the complaint under section 156(3) Cr.P.C. was filed before him. The learned Magistrate on receiving a complaint against a cognizable offence, if he is satisfied that the investigation is necessary, he can direct the police to investigate the case. The second option available to the learned Magistrate is that if he is satisfied that the investigation is not required, he may treat the application of the complainant as a complaint and he may examine the witnesses of the complainant under section 200 & 202 Cr.P.C. When a prima facie case is made out and the ingredient of any offence is made out by the contents of the application, the Magistrate may direct the police for investigation. It is pertinent to mention here that the Magistrate while passing the order cannot direct that the case should be registered mentioning the sections which have been enumerated in the application-complaint. If prima facie offence is made out and the Magistrate comes to the conclusion that the offence was committed then he will direct the police to investigate the matter. In the instant case, the in-charge of the police station has also submitted its report that the offence has been

committed with the son of the applicant. The police report also reveals that the case has not been registered. The police has submitted that some inquiry is being made in the matter. It is obligatory under the provisions of Code of Criminal Procedure that if the police comes to the conclusion that the offence has been committed, they are bound to lodge the report against the culprits. Though in this case the police has omitted to do the statutory duty. However, this burden has been cast upon the Magistrate by the legislature to see whether the police has registered the case in a cognizable offence or not. The magistrate can direct the police to register and investigate the matter or the Magistrate has the power to register the application as complaint and may proceed under section 200 & 202 Cr.P.C. In this case, the magistrate has also failed to discharge his duty as provided under the Code of Criminal Procedure. Therefore, the order passed by the magistrate is erroneous. The order passed by the Magistrate is liable to be set aside.

7. Therefore, the order 28.04.2006 passed by the Special Judicial Magistrate, IInd Dehradun in misc. application No. 26/2006 Dhyan Singh Vs. Khajan Singh Rana & others is hereby set-aside. The Magistrate is directed to pass the appropriate order in the light of the observations made above.

8. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 03.05.2006
LSR